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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

2372

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	10/633,800	August 4, 2003

on ___08/18/2009___

Signature ___/Jamie Cameron/___

	First Named Inventor
	Nasir Mahmood Mirza

Typed or printed name ___Jamie Cameron___

Art Unit	Examiner
2416	Ahmed Elallam

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
        Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☑ attorney or agent of record.
Registration number ___64,134___

☐ attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 _____

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08/18/2009
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Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☑ *Total of __1__ forms are submitted.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Nasir Mahmood Mirza   Confirmation No.: 7250

Application No.: 10/633,800   Group No.: 2416

Filed: 08/04/2003   Examiner: Ahmed Elallam

For: SYSTEM AND METHOD FOR BANDWIDTH SELECTION IN A COMMUNICATION
NETWORK

Mail Stop: AF
Commissioner for Patents
P. O. Box 1450
Alexandria, VA   22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

In response to the Advisory Action dated 08/03/2009, and the Final Office Action dated
05/18/2009, the Applicant requests review of the Final Rejection in the above-identified
application. No amendments are being filed with this request. A Notice of Appeal under 37
C.F.R. § 41.31(a)(1) is being filed herewith. The review is requested for the reasons provided in
the following remarks.

REMARKS

Claims 1-19 remain pending in the application. Claims 1-19 currently stand rejected. The Applicant respectfully requests consideration of the following remarks and allowance of the claims.

Claim Rejections under 35 U.S.C. § 103(a)

Claims 1, 6-8, 10, and 15-18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,867,483 (Ennis) in view of U.S. Patent No. 6,975,594 (Byers). The present rejection incorrectly asserts that Ennis teaches a bandwidth history including previous bandwidth selections, and thus represents clear error. The Applicant therefore respectfully disagrees with the rejection, as discussed in more detail below, and appropriate review is requested.

The Applicant respectfully argues that the Examiner incorrectly asserts that Ennis teaches displaying previous bandwidth selections. Claim 1 recites, in part, a processing system configured to display a bandwidth history, *including previous bandwidth selections*. The Examiner has erred by asserting that Ennis teaches these aspects by allowing a user to select which portion of a bandwidth history he would like to view. However, this element of claim 1 is drawn to display both a history of bandwidth usage *and* bandwidth selections that the user has made previously via the bandwidth selection indicium (see specification page 10, lines 16-20, page 15, lines 22-23, page 16, lines 1-6). For example, one graph could show the actual bandwidth usage on the network over time while another graph could show that the user selected 1.5Mbps of bandwidth on one day, 3.5Mbps on the next, 2Mbps a couple days later, etc.

In particular, the Examiner asserts that Ennis discloses displaying bandwidth history including previous bandwidth selections in figures 11, 13, and 15. However, figures 11, 13, and 15 only show bandwidth utilization history as a percentage relative to 56 kbps. While this could be construed as displaying bandwidth history, the figures do not include previous bandwidth selections. Specifically, bar graph 80 shows bandwidth utilization to the network and bar graph 82 shows bandwidth utilization from the network. Displaying a history of bandwidth utilization does not show a history of bandwidth selections made by a user. Rather, displaying bandwidth utilization history simply shows the amount of available bandwidth used over the displayed time period. Likewise, figures 13 and 15 merely show more detailed versions of bar graphs

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containing the same bandwidth utilization information as the bar graphs shown in figure 11. Furthermore, the 'selection' referred to by the Examiner in column 15, lines 28-41, only refers to a user's ability to select the graph and time intervals that the user wishes to view. The term 'selection' does not refer to the data displayed on the graph itself, it merely refers to presently selecting how the graph's information is displayed. For example, the user can select the scale of the x and y-axis of the graph. As explained above, 'previous bandwidth selections' from claim 1 does not refer to a user selecting a graph to display or scale of that graph. Thus, even though Ennis teaches displaying graphs with bandwidth utilization data, Ennis does not disclose that any of those graphs display previous bandwidth selections, as recited by claim 1. Therefore, none of figures 11, 13, and 15, nor any of the other graphs shown or described in Ennis, display a bandwidth history *including previous bandwidth selections*, as recited by claim 1.

Additionally, the combination of Ennis with Byers also does not disclose displaying previous bandwidth selections. Byers teaches displaying radio buttons for bandwidth selection (see figure 3, column 7, lines 36-56). However, Byers does not keep track of and display previously bandwidth selections. Therefore, while the combination of Ennis and Byers may allow the system in Ennis to have bandwidth selection capability, neither reference, alone nor in combination, discloses displaying previous bandwidth selections, as recited by claim 1.

The Examiner's assertion that Ennis teaches a bandwidth history including previous bandwidth selections is incorrect and, thus, represents clear error. The rejection should therefore be withdrawn.

Independent claim 10 contains limitations similar to those of claim 1 and, therefore, its allowance is also respectfully requested. Additionally, the Applicant refrains from discussion of the remaining dependent claims in view of their dependence from otherwise allowable independent claims.

CONCLUSION

Based on the above remarks, the Applicant submits that the claims in their present form are allowable over the art of record. Additional reasons in support of patentability exist, but such reasons are omitted in the interests of clarity and brevity. The Applicant respectfully requests allowance of the claims at the Examiner's earliest convenience.

The Applicant hereby authorizes the Office to charge Deposit Account No. 21-0765 the appropriate fee under 37 C.F.R. § 41.20(b)(1) for the Notice of Appeal filed herewith. The Applicant believes no additional fees are due with respect to this filing. However, should the Office determine that additional fees are necessary, the Office is hereby authorized to charge Deposit Account No. 21-0765, accordingly.

Respectfully submitted,

/Brian L. Arment/

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